

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

RAYMOND CAMPOS,  
Petitioner,

v.

MARTIN BITER,  
Respondent.

Case No. [15-cv-04630-PJH](#)

**ORDER GRANTING RESPONDENT'S  
MOTION TO DISMISS AND DENYING  
CERTIFICATE OF APPEALABILITY**

Re: Dkt. Nos. 9, 13, 14

This is a habeas case brought pro se by a state prisoner under 28 U.S.C. § 2254. Respondent has filed a motion to dismiss on the ground that the petition is barred by the statute of limitations. Petitioner has filed an opposition. For the reasons that follow, the motion is granted.

**DISCUSSION**

**Statute of Limitations**

The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") imposed for the first time a statute of limitations on petitions for a writ of habeas corpus filed by state prisoners. Petitions filed by prisoners challenging noncapital state convictions or sentences must be filed within one year of the latest of the date on which: (A) the judgment became final after the conclusion of direct review or the time passed for seeking direct review; (B) an impediment to filing an application created by unconstitutional state action was removed, if such action prevented petitioner from filing; (C) the constitutional right asserted was recognized by the Supreme Court, if the right was newly recognized by the Supreme Court and made retroactive to cases on collateral review; or (D) the factual predicate of the claim could have been discovered through the exercise of due diligence. 28 U.S.C. § 2244(d)(1). Time during which a properly filed

1 application for state post-conviction or other collateral review is pending is excluded from  
2 the one-year time limit. *Id.* § 2244(d)(2).

3 The one-year period may start running from "the expiration of the time for seeking  
4 [direct] review." 28 U.S.C. § 2244(d)(1)(A). "Direct review" includes the period within  
5 which a petitioner can file a petition for a writ of certiorari from the United States Supreme  
6 Court, whether or not the petitioner actually files such a petition. *Bowen v. Roe*, 188 F.3d  
7 1157, 1159 (9th Cir. 1999). Accordingly, if a petitioner fails to seek a writ of certiorari  
8 from the United States Supreme Court, AEDPA's one-year limitations period begins to  
9 run on the date the ninety-day period defined by Supreme Court Rule 13 expires. See  
10 *Miranda v. Castro*, 292 F.3d 1063, 1065 (9th Cir. 2002) (where petitioner did not file  
11 petition for certiorari, his conviction became final ninety days after the California Supreme  
12 Court denied review); *Bowen*, 188 F.3d at 1159 (same).

13 On June 10, 2010, petitioner was sentenced to 34 years in prison. Motion to  
14 Dismiss "(MTD)", Exh. A at Appendix A; *People v. Campos*, No. H035756, 2012 WL  
15 3996829, at \*2 (Cal. Ct. App. Sep. 11, 2012). The judgment was affirmed by the  
16 California Court of Appeal on September 11, 2012. *Id.* On December 19, 2012,  
17 petitioner's petition for review in the California Supreme Court was denied. MTD, Ex. A.  
18 Petitioner had ninety days to file a petition for a writ of certiorari with the United States  
19 Supreme Court. See *Bowen*, 188 F.3d at 1159. He did not. Thus, petitioner's one-year  
20 limitations period began to run on March 19, 2013, and expired on March 18, 2014. See  
21 28 U.S.C. § 2244(d)(1). The instant federal petition filed on September 7, 2015, is  
22 untimely absent tolling.<sup>1</sup>

23 On September 17, 2014, petitioner filed a state habeas petition in the Monterey  
24 County Superior Court that was denied on October 28, 2014. MTD, Exh. B. On January  
25 2, 2015, petitioner filed a state petition in the California Court of Appeal that was denied  
26

27 <sup>1</sup> The court affords petitioner application of the mailbox rule as to all his habeas filings.  
28 *Houston v. Lack*, 487 U.S. 266, 275-76 (1988) (pro se prisoner filing is dated from the  
date prisoner delivers it to prison authorities).

1 on March 13, 2015.<sup>2</sup> On April 24, 2015, petitioner filed a state habeas petition in the  
2 California Supreme Court that was denied on August 12, 2015. California Supreme  
3 Court Case No. S226021.

4 All of petitioner's state habeas petitions were filed after the expiration of the statute  
5 of limitations. Therefore, petitioner will not receive statutory tolling for any of these  
6 petitions as they were filed after the expiration of the statute of limitations. *See Ferguson*  
7 *v. Palmateer*, 321 F.3d 820, 823 (9th Cir. 2003) ("[S]ection 2244(d) does not permit the  
8 reinitiation of the limitations period that has ended before the state petition was filed,"  
9 even if the state petition was timely filed). Thus, this petition is untimely.

10 Petitioner does not contest that this petition is untimely in his opposition and he  
11 fails to address any of respondent's arguments. He does argue in a declaration filed with  
12 the petition that the petition is timely due to the change in law pursuant to *Lafler v.*  
13 *Cooper*, 132 S. Ct. 1376 (2012). He also argues that he had trouble conducting legal  
14 research in prison.

15 Under § 2244(d)(1)(C), the one-year limitations period starts on the date on which  
16 "the constitutional right asserted was initially recognized by the Supreme Court, if the  
17 right has been newly recognized by the Supreme Court and made retroactively applicable  
18 to cases on collateral review." In interpreting an analogous provision for federal prisoners  
19 seeking to file under § 2255, the Supreme Court has held that the one-year limitations  
20 period begins to run on the date on which the Court recognized the new right being  
21 asserted, not the date on which that right was made retroactive. *See Dodd v. United*  
22 *States*, 545 U.S. 353, 357 (2005).

23 However, *Lafler* does not entitle petitioner to a later start date of the statute of  
24 limitations. This contention has been directly rejected by the Ninth Circuit. In *Buenrostro*  
25 *v. United States*, 697 F.3d 1137, 1140 (9th Cir. 2012), the Ninth Circuit held that *Lafler*

---

26  
27 <sup>2</sup> The exhibit containing this petition was not included with the motion to dismiss, however  
28 petitioner does not contest these dates and they do not ultimately affect the timeliness  
analysis.

1 did not announce a new constitutional rule but rather applied the Sixth Amendment right  
2 to effective assistance of counsel according to the test articulated in *Strickland v.*  
3 *Washington*, 466 U.S. 668, 686 (1984), and extended it to the plea-bargaining context in  
4 *Hill v. Lockhart*, 474 U.S. 52 (1985). "Because the Court in *Frye* and *Lafler* repeatedly  
5 noted its application of an established rule to the underlying facts, these cases did not  
6 break new ground or impose a new obligation on the State or Federal Government."  
7 *Buenrostro*, 697 F.3d at 1140. Petitioner is not entitled to an alternate start date of the  
8 statute of limitations under § 2244(d)(1)(C), and the petition is untimely.

9 Even if petitioner was entitled to an alternate start date, the instant federal petition  
10 is still untimely. *Lafler* was decided on March 21, 2012. Petitioner's one-year limitations  
11 period did not commence until a year later on March 19, 2013 and expired in 2014. An  
12 alternate start date pursuant to § 2244(d)(1)(C) does not aid petitioner because the  
13 alternate start day would have been earlier making the petition even more untimely.

14 Petitioner states in a declaration filed with the petition, that "I first became aware of  
15 this article [regarding *Lafler*] towards the end of 2013 when it was loaned to me by  
16 another inmate when I first was transferred to Corcoran State Prison in September of that  
17 year." Docket No. 2 at 2.<sup>3</sup> Assuming that the statute of limitations commenced in  
18 September 2013, when petitioner first became aware of the change in law, the petition is  
19 still untimely. Petitioner did not file his first state habeas petition until September 17,  
20 2014, a year later. In addition, nearly a month passed after the denial by the California  
21 Supreme Court before petitioner filed this federal petition. This petition would still be  
22 untimely.

23 Nor would the petition be timely under § 2244(d)(1)(D), if the limitations period  
24 started on the date when "the factual predicate of the claim or claims presented could  
25 have been discovered through the exercise of due diligence." The time begins "when the  
26

---

27 <sup>3</sup> Respondent notes in the motion to dismiss that petitioner has not described the exact  
28 date when he became aware of *Lafler* which would be crucial to his argument. Petitioner  
fails to discuss this issue in his opposition.

prisoner knows (or through diligence could discover) the important facts, not when the prisoner recognizes their legal significance.” *Hasan v. Galaza*, 254 F.3d 1150, 1154 n.3 (9th Cir. 2001) (quoting *Owens v. Boyd*, 235 F.3d 356, 359 (7th Cir. 2000)) (remanding case to district court for further factual findings concerning determination of when, with exercise of due diligence, petitioner could have discovered facts to support prejudice prong of IAC claim). Petitioner could have discovered the existence of a Supreme Court case had he exercised diligence in the eighteen months after *Lafler* was issued.

He also argues that he had trouble researching the law in prison. However, petitioner's limited access to a prison law library does not by itself constitute an “extraordinary circumstance” warranting equitable tolling. See *Ramirez v. Yates*, 571 F.3d 993, 998 (9th Cir. 2009) (“Ordinary prison limitations on [petitioner's] access to the law library and copier (quite unlike the denial altogether of access to his personal legal papers) were neither 'extraordinary' nor made it 'impossible' for him to file his petition in a timely manner.”). For all these reasons, the petition is untimely.

### CONCLUSION

1. Petitioner’s boilerplate motion for an evidentiary hearing (Docket No. 13) that contains no specific arguments is **DENIED**. Petitioner’s motion for appointment of counsel (Docket No. 14) is **DENIED** because this case is dismissed.

2. Respondent’s motion to dismiss (Docket No. 9) is **GRANTED** as discussed above. The petition is **DISMISSED**. The clerk shall close the file.

### APPEALABILITY

The federal rules governing habeas cases brought by state prisoners require a district court that enters a final order adverse to the petitioner to grant or deny a certificate of appealability (“COA”) in the order. See Rule 11(a), Rules Governing § 2254 Cases, 28 U.S.C. foll. § 2254.

A petitioner may not appeal a final order in a federal habeas corpus proceeding without first obtaining a certificate of appealability. See 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). Section 2253(c)(1) applies to an appeal of a final order entered on a

1 procedural question antecedent to the merits, for instance a dismissal on statute of  
2 limitations grounds, as here. *See Slack v. McDaniel*, 529 U.S. 473, 483 (2000).

3 “Determining whether a COA should issue where the petition was dismissed on  
4 procedural grounds has two components, one directed at the underlying constitutional  
5 claims and one directed at the district court’s procedural holding.” *Id.* at 484-85. “When  
6 the district court denies a habeas petition on procedural grounds without reaching the  
7 prisoner’s underlying constitutional claim, a COA should issue when the prisoner shows,  
8 at least, that jurists of reason would find it debatable whether the petition states a valid  
9 claim of the denial of a constitutional right and that jurists of reason would find it  
10 debatable whether the district court was correct in its procedural ruling.” *Id.* at 484. As  
11 each of these components is a “threshold inquiry,” the federal court “may find that it can  
12 dispose of the application in a fair and prompt manner if it proceeds first to resolve the  
13 issue whose answer is more apparent from the record and arguments.” *Id.* at 485.  
14 Supreme Court jurisprudence “allows and encourages” federal courts to first resolve the  
15 procedural issue, as was done here. *See id.*

16 Here, the court declines to issue a COA regarding the procedural holding or the  
17 underlying claim because reasonable jurists would not find the court’s findings debatable.  
18 The court therefore **DENIES** a COA.

19 **IT IS SO ORDERED.**

20 Dated: May 16, 2016



21  
22  
23 PHYLLIS J. HAMILTON  
United States District Judge

24 \\CANDOAK\Data\Users\PJHALL\\_psp\2015\2015\_04630\_Campos\_v\_Biter\_(PSP)\15-cv-04630-PJH-mtd.docx  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

RAYMOND CAMPOS,  
Plaintiff,

v.

MARTIN BITER,  
Defendant.

Case No. [15-cv-04630-PJH](#)

**CERTIFICATE OF SERVICE**


I, the undersigned, hereby certify that I am an employee in the Office of the Clerk,  
U.S. District Court, Northern District of California.

That on May 16, 2016, I SERVED a true and correct copy(ies) of the attached, by  
placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter  
listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an  
inter-office delivery receptacle located in the Clerk's office.

Raymond Campos ID: F32153  
P.O. Box 500  
Chino, CA 91708

Dated: May 16, 2016

Susan Y. Soong  
Clerk, United States District Court

By:   
Nichole Peric, Deputy Clerk to the  
Honorable PHYLLIS J. HAMILTON

United States District Court  
Northern District of California